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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* RICHARD J. HERTZ and SCOTT P. ROBERTSON

Appeal 2010-001090  
Application 09/737,371  
Technology Center 2600

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Before CARL W. WHITEHEAD JR., ERIC S. FRAHM, and  
ANDREW J. DILLON, *Administrative Patent Judges*.

DILLON, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 1-12, 15-19, and 21-29. Claims 13, 14, and 20 have been cancelled. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

STATEMENT OF THE CASE

Appellants' invention is directed to a system and method for distributing digital images. *See* Spec. 12, Abstract of the Disclosure.

Claim 1 is illustrative with key disputed limitations emphasized:

1. A system for distributing digital images to a user, the system comprising:

an image capture device for creating digital images, *wherein the digital images include metadata containing information about a source of the digital images;*

at least one image server in communication with the image capture device, the image server receiving and storing digital images transmitted from the image capture device; and

at least one programmable software agent in communication with the at least one image server, the at least one software agent including at least one set of user-specified criteria for selecting digital images, the at least one set of user-specified criteria including a desired source of the digital images, wherein for each set of user-specified criteria the at least one software agent *automatically compares the user-specified criteria with the metadata of digital images available at the image server during a first time period to evaluate and select digital images from the desired source for distribution to the user*, the at least one software agent automatically comparing the user-specified criteria with the metadata of additional digital images not available during the first time period whenever the additional digital images are made available at the image server.

The Examiner relies on the following as evidence of unpatentability:

Savitzky	US 6,571,271 B1	May 27, 2003 (Filed May 3, 1999)
Mathias	US 6,480,627 B1	Nov. 12, 2002 (Filed June 29, 1999)
Shiota	US 6,337,712 B1	Jan. 8, 2002 (Filed Nov. 20, 1997)

#### THE REJECTIONS

1. The Examiner rejected claims 1-8, 10, 15-19, and 21-23 under 35 U.S.C. § 103(a) as unpatentable over Savitzky and Mathias. Ans. 5-13.<sup>1</sup>
2. The Examiner rejected claims 9, 11, and 12 under 35 U.S.C. § 103(a) as unpatentable over Savitzky, Mathias, and Shiota. Ans. 13-15.
3. The Examiner rejected claims 24-29 under 35 U.S.C. § 103(a) as unpatentable over Savitzky, Mathias, and Zhang. Ans. 15.

#### ISSUE

Based upon our review of the record, the arguments proffered by Appellants and the findings of the Examiner, we find the following issue to be dispositive of the claims on appeal:

Under § 103, has the Examiner erred in rejecting claims 1-8, 10, 15-19, and 21-23 by finding that the cited references show or suggest digital images which include “metadata containing information about a source of the digital images” and wherein a software agent “automatically compares the user-specified criteria with the metadata of digital images available at the image server during a first time period to evaluate and select digital images

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<sup>1</sup> Throughout this opinion, we refer to the Appeal Brief filed March 14, 2007; the Examiner’s Answer mailed July 19, 2007; and the Reply Brief filed February 28, 2007.

from the desired source for distribution to the user” as set forth in independent claims 1, 15, and 21.

## ANALYSIS

Appellants argue that, despite the fact that Savitzky discloses that metadata may be associated with a digital image and that the metadata may include multiple pieces of information (e.g., camera ID, date of capture, GPS location), there is no indication within Savitzky that such information may be utilized as search criteria. App. Br. 7, Reply Br. 1-3.

Appellants further argue that the cited references fail to show or suggest automatically comparing the metadata of additional images against user-specified criteria “whenever the additional images are made available at the image server,” as set forth in independent claims 1, 15, and 21. App. Br. 8, Reply Br. 4.

The Examiner finds Savitzky discloses a system for distributing digital images where the digital images include metadata containing information about the digital images, such as: camera ID, date of capture, and the like. The Examiner also finds that Savitzky discloses a software agent that compares user specified criteria with the image metadata, noting that Savitzky expressly states that the image database is “searchable by text (i.e. from the captions or titles) or by image features.” Ans. 5-7.

The Examiner also finds that Mathias discloses an image retrieval system which utilizes a “standing order” to repeatedly and automatically search for images so that the user may be updated continuously. Ans. 9-10.

We find Appellants’ arguments unpersuasive. Appellants argument that searching by “captions or titles” is not suggestive of searching for an image from a “desired source” does not address the express teaching within

Savitzky of searching images by “image features.” Further, we find that Appellants’ failure to expressly define “source” within the Specification in a manner which would render the Examiner’s interpretation unreasonable, leads us to conclude that Savitzky’s teaching of searching by “image features” is suggestive of Appellants’ claimed searching for images from a “desired source.”

Further, we find the teaching within Mathias of a repeated and automatic search for additional desired images after a first time period is suggestive of Appellants’ claimed “automatically comparing the user-specified criteria with the metadata of additional digital images not available during the first time period whenever the additional digital images are made available at the image server” (Claims 1, 15, 21).

Consequently, we find the Examiner did not err in rejecting claims 1, 15, and 21 as unpatentable over Savitzky and Mathias. Claims 2-12, 16-19, and 22-29, which were not argued separately, fall as well.

#### CONCLUSION

The Examiner did not err in rejecting claims 1-12, 15-19, and 21-29 under § 103.

#### ORDER

The Examiner’s decision rejecting claims 1-12, 15-19, and 21-29 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

#### AFFIRMED

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